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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN CONNELL,

Defendant and Appellant.

2d Crim. No. B286931
(Super. Ct. No. 1507193)
(Santa Barbara County)

John Connell appeals a judgment of conviction following his nolo contendere plea to second degree robbery, receiving stolen property, and evading a police officer, with admissions that he received the stolen property for the benefit of a criminal street gang and also served a prior prison term. (Pen. Code, §§ 211,¹ 496, subd. (a), 186.22, subd. (b), 667.5, subd. (b); Veh. Code, § 2800.2.) We conclude that the trial court properly denied a motion to dismiss filed pursuant to the "two-dismissal" rule of

¹ All further statutory references are to the Penal Code unless otherwise stated.

section 1387. (*People v. Juarez* (2016) 62 Cal.4th 1164, 1169-1175 [discussion of "two-dismissal" rule and public policies implemented by section 1387.]) We affirm.

This appeal concerns a prosecution related to a crime spree committed by Connell and his two codefendants in Los Angeles and Santa Barbara counties on January 18 and 19, 2016. The Los Angeles and Santa Barbara prosecutors filed separate felony complaints regarding the crimes committed in each county. Later, by agreement between the two prosecutors, the Santa Barbara prosecutor filed a new felony complaint alleging both the Los Angeles and Santa Barbara crimes. The Los Angeles prosecutor then dismissed the Los Angeles complaint. Later, the Santa Barbara prosecutor dismissed his first-filed complaint because he was not ready to proceed to trial. Connell then filed a motion to dismiss the newly filed complaint pursuant to the two-dismissal rule of section 1387 and *People v. Juarez, supra*, 62 Cal.4th 1164, 1169-1175. He now appeals the trial court's denial of his dismissal motion.

FACTUAL AND PROCEDURAL HISTORY

Los Angeles County Case No. GA097984

On January 27, 2016, the Los Angeles County prosecutor filed a felony complaint against Connell and his two codefendants, Freddie Gutierrez and Felipe Barrera, Jr., charging them with second degree robbery, second degree commercial burglary, identity theft (Gutierrez only), theft (Gutierrez only), and carjacking. (§§ 211, 459, 530.5, subd. (a), 484e, subd. (d), 215, subd. (a).) The complaint also alleged personal weapon use and commission of the crimes to benefit a criminal street gang. (§§ 12022, subd. (b)(1), 186.22, subd. (b).) The Los Angeles trial court issued an arrest warrant for the

defendants based upon this complaint. Other than the eventual dismissal of the complaint, no further action occurred in this prosecution.

The charges arose from the defendants' January 18, 2016, robbery of Jose Arteaga in Glendale. At knifepoint, Arteaga relinquished his wallet, containing credit cards and his identification. Approximately one hour later, the defendants attempted to use Arteaga's credit card at a Glendale shoe store. The credit card charge was declined by the issuer.

Shortly thereafter, one defendant simulated a firearm under his clothing and the defendants seized the Spectra Kia automobile of Zhaneta Tadevosyan and her son, Loris Nerkararyan. Tadevosyan and Nerkararyan left behind cellular telephones, a wallet, a purse, and jewelry in the Kia automobile.

Santa Barbara County Case No. 1492817²

On January 21, 2016, the Santa Barbara County prosecutor filed a felony complaint against Connell and the same two codefendants and, later, three amended complaints against the three defendants. The third amended complaint dated January 26, 2016, charged Connell with evading a police officer, unlawful driving or taking of a vehicle, receiving stolen property, misdemeanor theft, and misdemeanor resisting arrest. (Veh. Code, §§ 2800.2, subd. (a), 10851, subd. (a); §§ 496, subd. (a), 484g, subd. (a), 148, subd. (a)(1).) The complaint also alleged that the defendants committed the crimes to benefit a criminal street gang. (§ 186.22, subd. (b).)

² To ease the reader's task, we will refer to the relevant criminal prosecutions in Santa Barbara County by an asterisk and the last three digits of the case number.

The charges arose when Santa Barbara Sheriff's Deputy David Maupin attempted to stop the Kia automobile for a license plate light malfunction in the parking lot of a Carpinteria motel in the early morning of January 19, 2016. A high-speed freeway chase ensued until Connell lost control of the automobile and hit street vegetation. Connell fled the automobile but was apprehended after a foot chase. Connell had Tadevosyan's and Nerkararyan's identification and credit cards on his person and the Kia automobile contained Tadevosyan's credit cards, passport, and jewelry. Additional stolen property was in the motel room. Connell and his codefendants are members of the Santa Barbara "Eastside" criminal street gang.

After three continuances, the preliminary examination on this prosecution occurred. On March 24, 2016, the prosecutor filed an information charging Connell with evading arrest, unlawful driving or taking of a vehicle, receiving stolen property, and street terrorism. The information also alleged a criminal street gang enhancement and service of a prior prison term. During the following eight months, there were many court appearances for arraignment, readiness and settlement, and a section 995 motion. The parties also conducted plea negotiations, but Connell and his codefendants were concerned with the effect of their admissions in the Los Angeles County prosecution.

Discussions with the Los Angeles County Prosecutor

On November 16, 2016, the Santa Barbara County prosecutor wrote the Los Angeles County prosecutor and requested that, pursuant to section 786, subdivision (a), Santa Barbara County prosecute the Los Angeles County crimes alleged in case No. GA097984. On December 15, 2016, the Los Angeles prosecutor agreed, noting the positive factors of convenience of

witnesses with only one trial, and the one-time presentation of expert witness testimony regarding the Santa Barbara "Eastside" gang. The prosecutor's letter concluded: "Based upon the above facts and considerations, the Los Angeles District Attorney's Office agrees prosecution of the Los Angeles County offenses may be conducted by the Santa Barbara District Attorney's Office. Please notify us immediately upon your decision to file the charges related to the Los Angeles County crimes so that we may dismiss our case if necessary."

Santa Barbara Case No. 1507193

On January 4, 2017, the Santa Barbara prosecutor filed a new felony complaint alleging crimes of second degree robbery, second degree burglary, carjacking, and street terrorism, along with two theft-related counts against Gutierrez only. The complaint also alleged that the crimes were committed to benefit a criminal street gang. On January 9, 2017, the prosecutor informed the defendants of his intent to consolidate case No. *817 with case No. *193 after the preliminary examination in the latter case.

Approximately one week later, the prosecutor informed defendants of the Los Angeles County prosecutor's decision to permit Santa Barbara County to prosecute the Los Angeles County crimes pursuant to section 786, subdivision (a). On January 19, 2017, the Los Angeles prosecutor dismissed the Los Angeles complaint "due to [the] filing of this case in the County of Santa Barbara." The Los Angeles County trial court granted the prosecution request "in furth[erance] of justice per [section] 1385" and recalled the arrest warrant.

Thereafter, the Santa Barbara prosecutor requested a continuance of trial in case No. *817 due to the unavailability of

witnesses. The trial court denied the continuance request and, upon the prosecutor's motion, dismissed the case without prejudice to refileing.

A preliminary examination regarding case No. *193 occurred on March 14 and 15, 2017. On March 24, 2017, the Santa Barbara prosecutor filed a seven-count felony information alleging crimes committed in Los Angeles and Santa Barbara Counties: robbery (two counts), carjacking, receiving stolen property, evading a police officer, and street terrorism (two counts). (§§ 211, 215, subd. (a), 496, subd. (a), 186.22, subd. (a); Veh. Code, § 2800.2.) The information also alleged personal use of a deadly weapon and crimes committed to benefit a criminal street gang. (§§ 12022, subd. (b)(1), 186.22, subd. (b).)

Connell filed a motion to dismiss case No. *193 pursuant to the two-dismissal rule of section 1387. Following written and oral argument, the trial court denied the motion. In its written ruling, the court concluded that the Los Angeles County complaint was a duplicate pleading of the Santa Barbara County complaint in case No. *193. The court also found no denial of Connell's speedy trial rights.

Conviction, Sentencing, and Appeal

Following denial of his motion to dismiss, Connell pleaded nolo contendere to second degree robbery, receiving stolen property, and evading a police officer, with admissions that he received the stolen property for the benefit of a criminal street gang and served a prior prison term. (§§ 211, 496, subd. (a), 186.22, subd. (b), 667.5, subd. (b); Veh. Code, § 2800.2.) In accordance with a plea agreement, the trial court sentenced Connell to nine years eight months' imprisonment; imposed a \$300 restitution fine, a \$300 parole revocation restitution fine

(suspended), a \$40 court security assessment, and a \$90 criminal conviction assessment; and awarded Connell 726 days of presentence custody credit, consisting of 632 actual days of credit and 94 days of conduct credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Connell appeals and contends that the trial court erred by not dismissing the present prosecution, case No. *193. The trial court granted Connell's request for a certificate of probable cause based upon his allegations of the ineffective assistance of counsel in recommending the plea agreement.

DISCUSSION

Connell argues that the trial court erred by denying his motion to dismiss because the charges against him were twice dismissed. He also contends that the Santa Barbara County charges were for the same offenses as charged in Los Angeles County.

Section 1387 generally permits a felony charge to be dismissed and refiled once, but not twice. (*People v. Juarez, supra*, 62 Cal.4th 1164, 1167.) Section 1387, subdivision (a) provides: "An order terminating an action pursuant to this chapter, or Section 859b, 861, 871, or 995, is a bar to any other prosecution for the same offense if it is a felony or if it is a misdemeanor charged together with a felony and the action has been previously terminated pursuant to this chapter" "[T]his chapter" includes dismissals pursuant to section 1385.

Section 1387 implements several related public policies. (*People v. Juarez, supra*, 62 Cal.4th 1164, 1170.) It curtails prosecutorial harassment by limiting the number of times charges may be refiled. It also reduces the possibility that prosecutors might forum shop by using the power to dismiss and

refile. Finally, it prevents the evasion of speedy trial rights through repeated dismissals and refilings. (*Ibid.*) "The purpose of section 1387 is to prevent improper successive attempts to prosecute a defendant." (*People v. Cossio* (1977) 76 Cal.App.3d 369, 372.)

Whether a refiling violates section 1387 depends upon whether a dismissal protects a defendant against prosecutorial harassment and denial of speedy trial rights. Generally, dismissals of duplicative accusatory pleadings are not considered to be terminations of actions within the scope of section 1387. (*Berardi v. Superior Court* (2008) 160 Cal.App.4th 210, 220-221 [dismissed information found to be duplicate pleading of indictment for purposes of section 1387 when indictment successfully challenged and a second complaint filed].)

Trial courts have inherent, nonstatutory authority to dismiss a duplicative accusatory pleading. (*Berardi v. Superior Court, supra*, 160 Cal.App.4th 210, 224; *People v. Cossio, supra*, 76 Cal.App.3d 369, 372 ["[T]he subsequent dismissal of a complaint involving the same facts does not involve the defendant in the kind of successive prosecutions that section 1387 was designed to prevent"].) Termination before trial of the lesser of two otherwise identical proceedings will always be in the "interest of justice." (*People v. Bohlen* (1992) 4 Cal.App.4th 400, 402.)

In our independent judgment, there is no public policy that would support application of the two-dismissal rule of section 1387 here. (*People v. Juarez, supra*, 62 Cal.4th 1164, 1170 [ascertaining the legislative intent of section 1387 is not "a purely logical game," but an exercise "to divine the human intent" of the statute]; *People v. Hernandez* (2010) 181 Cal.App.4th 404, 411

[section 1387 does not apply where no objective of the statute can be accomplished by barring prosecution].) There is no evidence of forum shopping, prosecutorial harassment, interference with the right to a speedy trial, or improper successive attempts to prosecute. Connell was relieved from the necessity of defending the same charges in two different courts and was left with one prosecution to answer and defend. He was not involved in the type of successive prosecutions that section 1387 intends to preclude. The filing of case No. *193 and the subsequent dismissal of the duplicate Los Angeles prosecution achieves the goals of judicial economy, the convenience of witnesses, settlement discussions, and the avoidance of requiring Connell to defend two prosecutions in two jurisdictions. The trial court did not err by denying the dismissal motion.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN J.

TANGEMAN, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

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